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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,999	12/21/2001	Andreas N. Dorsel	10992125-2	6346

7590 10/20/2004

AGILENT TECHNOLOGIES, INC.
Intellectual Property Administration
Legal Department, DL429
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EXAMINER

FORMAN, BETTY J

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/036,999

Applicant(s)

DORSEL ET AL.

Examiner

BJ Forman

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5,7-11 and 18-20.

Claim(s) withdrawn from consideration: 12-17.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

BJ Forman
Primary Examiner
Art Unit: 1634

Continuation of 2. NOTE:

The amendment to Claim 7 will not be entered because it further limits the first calibration step to "prior to scanning". This limitation was not previously considered. Therefore, the amendment would require further search and consideration..

Continuation of 5. does NOT place the application in condition for allowance because:

Regarding Claim 1, Applicant argues that Bengtsson teaches the calibration area within the array and not outside as instantly claimed. The argument has been considered but is not found persuasive because, as stated in the office action, Bengtsson specifically teaches scanning the sample as a calibration area to locate the array. Because they are scanning to "locate the array", they scanning area includes an area outside the array as claimed. Regarding Claim 5, Applicant argues that Bengtsson does not turn off the power based on a signal emitted from the first site. The argument has been considered but is not found persuasive because Bengtsson clearly teaches altering power based on signal emitted Col. 6, lines 1-64 and Fig. 4 as claimed. Regarding Claim 7, Applicant argues the claim as amended. Because the amendment has not been entered, the argument is deemed moot. Regarding Claim 18, Applicant argues Bengtsson does not adjust the power based on location or intensity of emitted light during a row scan as claimed. The argument has been considered but is not found persuasive because Bengtsson specifically teaches adjusting during the scan wherein the adjustment is based on brightest or saturated pixels (col. 8, lines 11-29) and therefore adjust based on emitted light as claimed.



BJ FORMAN, PH.D.
PRIMARY EXAMINER